

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CIV-2021-404-001761
[2023] NZHC 523**

BETWEEN

KHIENG CHIV
Plaintiff

AND

SANDY ZHUJUN DAI
Defendant

Hearing: On the papers

Judgment: 16 March 2023

**JUDGMENT OF WYLIE J
(Review of Registrar's decision)**

This judgment was delivered by Justice Wylie
On 16 March 2023 at 11.00 am
Pursuant to r 11.5 of the High Court Rules
Registrar/Deputy Registrar

Date:.....

Copy to:

K Chiv
S Dai

Introduction

[1] The plaintiff, Khieng Chiv, has filed a proceeding seeking damages for defamation from the defendant, Sandy Dai. Mr Chiv claims that Ms Dai defamed him in email correspondence sent to others in July 2021.

Background

[2] The proceeding was filed in September 2021 and a statement of defence was filed in November of that year.

[3] In April 2022, Ms Dai filed an interlocutory application. She sought orders for discovery and for the filing of a more explicit statement of claim. Mr Chiv filed a notice of opposition and the application was set down for hearing on 6 March 2023.

[4] Following the allocation of a fixture, Ms Dai, acting on her own behalf, filed further applications—one dated 16 November 2022 headed “Amended Interlocutory Application and a Summary Judgment on Notice” and the other dated 23 November 2022 and headed “Further Amended Interlocutory Application to Add Parties to the Proceeding”.

[5] A hearing fee of \$1,600 was payable in respect of the interlocutory application. It was due for payment on 1 March 2023. Ms Dai applied for a waiver of the fee. She also sought waiver of Court search fees and a refund of filing fees already paid.

[6] In a decision issued on 16 February 2023, the Deputy Registrar declined the application. He was not satisfied that the proceeding involves a matter of genuine public interest and he noted that the information provided in the application did not qualify for a waiver pursuant to regulation 18(2)(b) of the High Court Fees Regulations 2013.

[7] In a minute issued on 27 February 2023, Johnstone J noted that the hearing fee had not been paid and directed that the matter should be called in the Duty Judge List on 2 March 2023. He noted that by that date, it would be clear whether Ms Dai had

paid the hearing fee. He recorded that if the fee was not paid, the fixture set down for 6 March 2023 might be vacated.

[8] When the matter was called on 2 March 2023, Johnstone J noted that Ms Dai had filed a second fee waiver request, based on an alleged change of circumstances, but that the second application had been declined by the Registrar on 1 March 2023. The Judge also noted that Ms Dai had informally sought review of both decisions to decline her fee waiver requests under s 160 of the Senior Courts Act 2016.

[9] The Deputy Registrar's decision of 1 March 2023 recorded that he was not satisfied that Ms Dai's application for a waiver of the hearing fee and for a refund of filing fees were incurred in a proceeding which concerned a matter of genuine public interest. Again, he recorded that the application "does not qualify pursuant to regulation 18.2(b) (sic) of High Court Fee[s] Regulations 2013".

[10] The fixture for the hearing of the April 2022 interlocutory application was vacated and a conference under s 35 of the Defamation Act 1992 was held instead.

[11] The conference was unsuccessful.

[12] On 9 March 2023, Associate Judge Gardiner in a minute recorded that all the matters the subject of Ms Dai's original interlocutory application of 27 April 2022 had been resolved between the parties. The Judge also made various orders to deal with the matters raised in the later applications dated 16 November 2022 and 23 November 2022. Insofar as I can glean, all interlocutory matters have now been resolved.

The current review application

[13] On 13 March 2023, Ms Dai filed an application for review of the Deputy Registrar's decisions of 16 February 2023 and 1 March 2023 declining her a refund of fees of \$610 she had paid when she filed her statement of defence and her interlocutory application of 27 April 2022.

[14] The grounds on which the review application is advanced are set out in a letter dated 13 March 2023 and an email dated 10 March 2023, both from Ms Dai. The letter

asserts that the proceeding carries significant public importance because it affects a number of people. Ms Dai says that she has suffered significant financial losses and costs because of the proceeding and that she is unlikely to be able to recover the same. She also says that unless fees are waived, the proceeding is unlikely to continue and that this is contrary to the public interest. She asserts that “[t]he question of law, is whether it is correct to abuse the legal system to deceive Court settlement”. The email was sent by Ms Dai to her “former clients” and it purports to retract various statements attributed to Ms Dai.

[15] Section 160 of the Senior Courts Act 2016 provides that a person who disagrees with a decision of a Deputy Registrar can apply to a Judge or an Associate Judge to review the decision. The application must be made within 20 working days of the date on which the applicant is notified of the decision or any further time that the Judge or Associate Judge allows on application.

[16] Ms Dai initially applied informally by email and, as noted, then followed up this informal application with an application for review in writing, dated 13 March 2023. Both the informal application and the formal application were within time.

[17] Section 160(4) provides that the review is conducted by way of rehearing and that it can be dealt with on the papers unless the Judge or Associate Judge directs otherwise.

[18] I have the relevant papers and am satisfied that I have all the materials that I require. There is no need for a viva voce hearing. Rather I have dealt with the matter on the papers.

Analysis

[19] I am satisfied that the Deputy Registrar’s decision declining Ms Dai a refund of fees paid was correct.

[20] Regulation 23 of the High Court Fees Regulations provides that the Registrar may, on application, refund a fee that has been paid if he or she is satisfied that no application under regulation 18 for a waiver of the fee was made, that the fee would

have been waived, in accordance with regulation 18, had that application been made, and that the criteria that would have justified the waiver still apply at the date of the application for the refund.

[21] Here, no application was made for a waiver of the filing fees payable when the statement of defence was filed or for the waiver of the filing fees payable when the interlocutory application of 27 April 2022 was filed. I am not however persuaded that the filing fees would have been waived, in accordance with regulation 18, had an application been made.

[22] Relevantly, regulation 18(2) provides as follows:

18 Power to waive fees

...

- (2) The Registrar may waive the fee payable by the person if satisfied,—
- (a) on the basis of one of the criteria specified in regulation 19, that the person is unable to pay the fee; or
 - (b) that the proceeding,—
 - (i) on the basis of one of the criteria specified in regulation 20, concerns a matter of genuine public interest; and
 - (ii) is unlikely to be commenced or continued unless the fee is waived.

[23] Regulation 18(2)(a) refers to the criteria specified in regulation 19. It provides as follows:

19 Criteria for determining when person unable to pay fee sought to be waived

For the purposes of these regulations, a person is unable to pay the fee sought to be waived if—

- (a) the person has been granted legal aid in respect of the matter for which the fee is payable; or
- (b) the person—
 - (i) is dependent for the payment of his or her living expenses on a specified benefit (as defined in section 198(3) of the Social Security Act 2018) that is

jobseeker support, sole parent support, a supported living payment, or an emergency benefit; or

- (ii) is wholly dependent for the payment of his or her living expenses on New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001 or a veteran's pension under the Veterans' Support Act 2014; or
- (iii) would otherwise suffer undue financial hardship if he or she paid the fee.

[24] Here, there is nothing in the papers filed by Ms Dai which suggests that any of the criteria set out in regulation 19 were or are met and that she is unable to pay the filing fees. The Registrar could not have been satisfied that that provision was met and indeed Ms Dai does not rely on it.

[25] Regulation 18(2)(b)(i) refers to the criteria specified in regulation 20. It sets out when a Registrar can find that a proceeding concerns a matter of genuine public interest. It provides as follows:

20 Criteria for determining when proceeding concerns matter of genuine public interest

For the purposes of these regulations, a proceeding that concerns a matter of genuine public interest is—

- (a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
- (b) a proceeding that—
 - (i) raises issues of significant interest to the public or to a substantial section of the public; and
 - (ii) has been or is intended to be commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.

[26] Ms Dai addresses this issue in her application, but with respect to her, the proceeding does not raise a matter of genuine public interest. The proceeding does not raise a question of law that is of significant interest to the public or a substantial section of the public. Nor, does it raise issues of significant interest to the public. Rather, it concerns relatively straightforward allegations of defamation. The matter is

of little moment, other than to the parties. In my judgment, the Registrar was correct to find that the proceeding did not concern a matter of genuine public interest.

[27] Accordingly, I decline Ms Dai's application to review the Registrar's decision declining to refund the filing fees which she has paid.

Wylie J